IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.888 OF 1990

The General Manager & Anr. ...Appellants
Vs.
Mrs Sayavva Appanna Bhimanna
Maigur & Ors. ...Respondents

Ms N.V. Masurkar for the Appellants.
None for the Respondents.

CORAM : A. S. OKA, J.

DATE : MARCH 31, 2006.

JUDGMENT:

1. The Appellants have impugned the judgment and order dated 29th June, 1990 passed by the learned Commissioner for Workmen's Compensation and Judge, Labour Court, Sangli by which the Appellants were directed to pay a sum of Rs.25,416/- as compensation amount with interest at the rate of 6% from the date of filing of the Application.

2. Day before yesterday I have heard submissions of the learned Advocate appearing for the Appellants. As none appeared for the Respondents, I had adjourned the matter till today. When the Appeal is called out today, none appears for the Respondents.

3. The Respondents are the legal representatives of the deceased claimant. The case of the claimant

was that he was working as a coolie with railways and his job was of loading and unloading of wagons in the Marshelling-cum-Transhipment Section. According to his case as per the instructions of the Officers of Railways he was separating two wagons by removing coupling joining the two wagons. At that time he was crushed between the two wagons. According to the case of the original claimant though there was no visible injury, he became unconscious and was taken to railway hospital. According to him he underwent two surgeries. According to his case, he was not taken back on duty as a result of injury sustained by him.

4. The claim was contested by the Appellants by contending that the claimant was an employee of a contractor and therefore, the Appellants were not the employers. It was contended that there was only a temporary disablement of the claimant for a period between 05th August, 1979 to 05th November, 1979 for which he was paid compensation of Rs.511.50/- by Railway Administration.

5. The learned Advocate appearing for the Appellants submitted that the Appellants cannot be termed as employers within the meaning of Section 2(d) of the Workmen’s Compensation Act, 1923 (hereinafter

referred to as the said Act). Inviting my attention to the medical certificates on record it was submitted that there was no evidence to show that the claimant suffered any permanent disability. The learned Advocate further pointed out that the compensation is computed on the erroneous assumption that there was 100% loss of earning capacity on the part of the claimant. It is submitted that there is no evidence of any permanent disability caused to the original claimant.

6. I have considered the submissions. It must be noted here that in the written statement filed by the Appellants they have come out with a case that they have paid compensation of Rs.511.50/- to the original claimant for temporary disablement from 0th August, 1979 to 05th November, 1979. Moreover, there is evidence on record to show that the Railway Authority had issued a pass in favour of the claimant which is normally issued to railway employees. The said pass has been exhibited on record. Once the Appellants say that they had paid compensation to the claimant on account of temporary disablement suffered by him, now it is not open for the Appellants to contend that they were not the employers of the original claimant. It is also pertinent to note that a specific contention

is raised in paragraph No.8 of the written statement that the claimant did not turn up for the work after his discharge on 05th November, 1979. Therefore, the contention of the Appellants that they were not employers of the claimant deserves to be rejected.

7. It was sought to be contended that the claimant was not entrusted with the work of separating the wagons and he was working only as coolie doing the work of loading and unloading the wagons. It is pertinent to note that in the cross-examination of the original claimant he has stated that the Officers who were present at the time of accident had given directions to him to remove the coupling between the two wagons. In the examination-in-chief he has named the Officers of Railway who were present at the time of accident and has stated that in their presence incident has taken place. There is no suggestion given in the cross-examination of the claimant that the said Officers were not present. Therefore, this contention raised by the Appellants has no merit.

8. My attention was invited to the documents on record showing the nature of injury caused to the claimant. Extract of entry made in the record of Railway hospital on 07th August, 1979 shows that the

claimant suffered rupture of urethra. It also shows that a surgical procedure was carried out under general anaesthesia. The certificate issued by a doctor attached to Southern Railway discloses that there was a major injury caused to the claimant. The certificate does not positively say that there is no disability but an opinion of the doctor is recorded therein that no disablement was likely.

9. In paragraph No.8 of the written statement the Appellants have stated that the claimant did not turn up to work after his discharge from the hospital. He was discharged on 05th November, 1979 and he was hospitalised from 05th August, 1979. It is stated in the written statement that in the opinion of the doctor attached to railways, the claimant did not suffer from any permanent disability and there was no loss of earning capacity. The Appellants have not produced on record the discharge certificate and opinion of the doctor which is referred to in the written statement. No evidence has been led to substantiate the contention raised in written statement that it was the claimant who did not turn up to work after his discharge. The Appellants could have led evidence by producing the relevant hospital records of the railway hospital to show that the

earning capacity of the claimant was not affected. There is nothing on record to show that after discharge from the hospital, the claimant was allowed to resume duty.

10. On the basis of material on record, the learned Commissioner of Workmen's Compensation has accepted the case made out by the claimant that there was complete loss of earning capacity as a result of injury caused to the claimant arising out of his employment. Accordingly, compensation of Rs.25,416/- has been awarded.

11. In my view, no case is made out for interference as findings which are recorded are borne out by record. Accordingly, First Appeal is dismissed with no orders as to costs.

JUDGE